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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/720,557	11/24/2003	John Lee Hammons	9130M	4853
27752 7590 03/26/2008 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG.			EXAMINER	
			HAND, MELANIE JO	
	WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224		ART UNIT	PAPER NUMBER
CINCINNATI			3761	
			MAIL DATE	DELIVERY MODE
			03/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Application No. Applicant(s) 10/720,557 HAMMONS ET AL. Office Action Summary Examiner Art Unit MELANIE J. HAND 3761 -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). Status 1) Responsive to communication(s) filed on 19 December 2007. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-17 and 21-29 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) \_\_\_\_\_ is/are allowed. 6) Claim(s) 1-17.21-29 is/are rejected. 7) Claim(s) \_\_\_\_\_ is/are objected to. 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are; a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abevance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some \* c) None of: Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). \* See the attached detailed Office action for a list of the certified copies not received. Attachment(s)

1) Notice of References Cited (PTO-892)

Notice of Draftsperson's Patent Drawing Review (PTO-948)

Imformation Disclosure Statement(s) (PTC/G5/08)
 Paper No(s)/Mail Date \_\_\_\_\_\_.

Interview Summary (PTO-413)
 Paper No(s)/Mail Date.

6) Other:

Notice of Informal Patent Application

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### DETAILED ACTION

#### Continued Examination Under 37 CFR 1.114

 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 19, 2007 has been entered.

#### Response to Arguments

2. Applicant's arguments, see Remarks, filed December 19, 2007, with respect to the rejection(s) of claim(s) 1-5, 9, 14 and 17 under 35 U.S.C. 102 and claims 6-8, 10-13, 15 and 16 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with
the written description requirement. The claim(s) contains subject matter which was not
described in the specification in such a way as to reasonably convey to one skilled in the

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relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With respect to claim 21, the disclosure as originally filed does not provide support for a second region consisting essentially of the claimed out-of-plane deformations for two reasons: (1) the disclosure repeatedly refers to a second region comprising out-of-plane deformations, and (2) both the first region and the second region also contain at least one deepembossed channel, and therefore the second region cannot consist essentially of the out-of-plane deformations. With respect to claim 22, the disclosure does not provide support for a first region consisting essentially of the claimed apertures for two reasons analogous to those provided *supra* with respect to claim 21, namely that the disclosure refers repeatedly to a first region comprising said apertures and that because of the presence of at least one deep embossed channel that extends the entire length of the article, the first region contains the at least one deep embossed channel and therefore cannot also consist essentially of the apertures. Claim 23 contains both the limitation of claim 21 and the limitation of claim 22 and is thus also rejected for the same reasons presented in this paragraph with respect to claims 21 and 22.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claim 5 recites the limitation "adjacent said first region of said sanitary napkin" in lines 4-
- 5. There is insufficient antecedent basis for this limitation in the claim. The claimed first region is the first region of the claimed facing laver, not the sanitary napkin.

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### Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

 Claims 1-6, 8-17 and 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Mizutani (EP 1,022,008 A2).

With respect to **claim 1**: Mizutani teaches a sanitary napkin 1 having a longitudinal axis defined by center line 2 defining a longitudinal orientation, longitudinally-oriented side edges (see Fig. 1), a transverse axis orthogonal to said longitudinal axis 2 that is parallel to line X-X in Fig. 1 (see Fig. 1) and a thickness measured orthogonally to a plane defined by said longitudinal axis 2 and said transverse axis (see Fig. 2). Sanitary napkin 1 comprises a facing layer in the form of topsheet 5 joined to a backsheet 6 ([0020],[0025]) and an absorbent core 7 disposed between said facing layer 5 and said backsheet 6. ([0018]) The facing layer 5 comprises a first region in the form of first absorbent surface zone 8 comprising a plurality of apertures in the form of liquid passages 12 ([0019],[0022]) and a second region in the form of second absorbent surface zone 9 comprising a plurality of out-of-plane deformations in the form of gathers 13 defining crests and troughs having heights or depths relative to the plane of the topsheet 5. ([0023])

With respect to claim 2: The facing layer 5 of Mizutani comprises a topsheet in the form of thermoplastic sheet 5a and a secondary topsheet in the form of thermoplastic sheet 5b. ([0024])

With respect to claim 3: The out-of-plane deformations 13 are rib-like elements inasmuch as the deformations 13 define crests and troughs as ribs do. As to the limitation that the out-of-plane deformations are soft and resilient, Mizutani teaches that both topsheet 5a and secondary

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topsheet 5b are formed from spun bond nonwoven fabrics, which are the same fabrics disclosed by applicant as the materials for the precursor web 200 from which the claimed out-of-plane deformations are formed (see Specification, page 6, lines 19-22; page 7, lines 7-9; and page 9, line 24-page 10, line 1). Since applicant considers spunbond nonwoven fabrics to be suitable exemplary materials for the claimed soft, resilient out-of-plane deformations, the out-of-plane-deformations 13 of Mizutani formed from the spunbond nonwoven fabric topsheet 5b are inherently and necessarily also soft and resilient. ([0023], [0024]) Thus, the out-of-plane deformations 13 of Mizutani are soft-resilient rib-like elements that meet all of the limitations of claim 3.

With respect to claim 4: As can be seen in Fig. 1 of Mizutani, the rib-like elements 13 are longitudinally-oriented. ([0023])

With respect to claim 5: The first region 8 of facing layer 5 of Mizutani is disposed centrally to said sanitary napkin 1 along said longitudinal axis 2 inasmuch as the first region 8 is symmetrical with respect to said longitudinal and transverse axes of napkin 1. The second region 9 of facing layer 5 is disposed adjacent at least one of the longitudinally-oriented side edges and the first region 8. (Fig. 1)

With respect to claim 6: The article 1 of Mizutani further comprises a channel in the form of compressed grooves 11a,11a,11b,11b. ([0021]) An "embossed" substrate, in this case the combined structure of facing layer 5 and absorbent core 7 taught by Mizutani, is a substrate that has a three-dimensional profile created by discrete areas of compression, in this case compressed grooves 11a,11a,11b,11b. The term "deep-embossed channel" is not clearly

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defined in the specification because the only description of the channels in the disclosure is preceded by the words "by way of example" (see Specification, page 9, line 9). Therefore, claim 6 is given its broadest reasonable interpretation herein by examiner, and Mizutani teaches that the napkin further comprises a deep-embossed channel 11a/11a/11b/11b.

With respect to claim 8: Mizutani teaches a sanitary napkin 1 having a longitudinal axis in the form of center line 2 defining a longitudinal orientation and longitudinally-oriented side edges (see Fig. 1), a transverse axis parallel to line X-X in Fig. 1 orthogonal to said longitudinal axis 2 (see Fig. 1), a thickness measured orthogonal to a plane defined by said longitudinal axis 2 and said transverse axis (see Fig. 2). Sanitary napkin 1 comprises a facing layer in the form of topsheet 5 joined to a backsheet 6 ([0020],[0025]), and an absorbent core 7 disposed between said facing layer 5 and said backsheet 6. ([0018]) The facing layer 5 comprises a first region in the form of first absorbent surface zone 8 comprising a plurality of apertures in the form of liquid passages 12 extending therethrough ([0019],[0022]) and a second region in the form of second absorbent surface zone 9 comprising a plurality of out-of-plane deformations in the form of gathers 13 defining crests and troughs and having a height relative to the plane of the topsheet 5. ([0023]) The article 1 of Mizutani further comprises at least one channel in the form of compressed groove 11a or 11b present only on the top surface of core 7 to form a "deeper compressed groove". These channels 11a,11b define an interior portion of the sanitary napkin 1 inasmuch as they define the longitudinally extending side edges of the first region 8 (see Fig. 1) and the lateral extent of the interior portion (i.e. not extending beyond the endpoints of the channels). The term "deep-embossed channel" is not clearly defined in the specification because the only description of the channels in the disclosure is preceded by the words "by way of example" (see Specification, page 9, line 9). Therefore the term "deep-embossed channel" is

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given its broadest reasonable interpretation herein by examiner. The term "embossed" means that a substrate, in this case the combined structure of facing layer 5 and absorbent core 7, has a three-dimensional profile created by discrete areas of compression, i.e. compressed grooves 11a,11b that bond the two layers 5,7 together. Thus, either compressed groove 11a or 11b of Mizutani meets the limitation of a deep-embossed channel.

With respect to claim 9: The facing layer 5 comprises a topsheet in the form of thermoplastic sheet 5a and a secondary topsheet in the form of thermoplastic sheet 5b joined to each other. ((0024))

With respect to claim 10: The out-of-plane deformations 13 are soft, resilient rib-like elements inasmuch as they are grooves and ridges fabricated from spun lace thermoplastic material, which is a soft, resilient material and inasmuch as the deformations 13 define crests and troughs as ribs do. Applicant does not provide explicit examples of materials for the claimed facing layer having the claimed out-of-plane deformations. Instead, applicant only discloses that the material for the claimed facing layer is a precursor web 200 that comprises spun bond nonwoven fabric from which the deformations are formed (see Specification, page 6, lines 19-22; page 7, lines 7-9; and page 9, line 24-page 10, line 1) Since Mizutani teaches that both topsheet 5a and secondary topsheet 5b are formed from spun bond nonwoven fabrics, the out-of-plane-deformations 13 defined in zone 9 defined by sheet 5b are inherently and necessarily soft and resilient. ([0023],[0024]) Thus the out-of-plane deformations of Mizutani are soft-resilient rib-like elements that meet all of the limitations of claim 3.

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With respect to claim 11: As can be seen in Fig. 1 of Mizutani, the rib-like elements 13 are longitudinally-oriented. ([0023])

With respect to claim 12: The interior portion (i.e. the portion of facing layer 5 that does not extend in any direction beyond the deep-embossed channels or their endpoints) is inherently and necessarily completely bounded by said deep-embossed channel, since the deep-embossed channels as taught by Mizutani define the interior portion. As to the limitation "the first region is disposed substantially within said interior portion", the phrase "substantially within" is not defined in the disclosure. Thus the phrase is given its broadest reasonable interpretation by examiner, i.e. that any portion of the first region 8 is located within the interior portion. Thus, the first region 8 of Mizutani is considered herein to be disposed substantially within the interior portion.

With respect to claim 13: Mizutani teaches a sanitary napkin 1 having a longitudinal axis in the form of center line 2 defining a longitudinal orientation and longitudinally-oriented side edges (see Fig. 1), a transverse axis parallel to line X-X in Fig. 1 that is orthogonal to said longitudinal axis 2 (see Fig. 1), and a thickness measured orthogonal to a plane defined by said longitudinal axis 2 and said transverse axis (see Fig. 2). Sanitary napkin 1 comprises a facing layer in the form of topsheet 5 joined to a backsheet 6 ([0020],[0025]), and an absorbent core 7 disposed between said facing layer 5 and said backsheet 6. ([0018]) The facing layer 5 comprises a second absorbent surface zone 9 comprising a plurality of out-of-plane deformations in the form of gathers 13 defining crests and troughs and having a height relative to the plane of the topsheet 5. ([0023]) The out-of-plane deformations 13 are soft, resilient rib-like elements inasmuch as they are grooves and ridges fabricated from spun lace thermoplastic material,

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which is a soft, resilient material and inasmuch as the deformations 13 define crests and troughs as ribs do. Applicant does not provide explicit examples of materials for the claimed facing layer having the claimed out-of-plane deformations. Instead, applicant only discloses that the material for the claimed facing layer is a precursor web 200 that comprises spun bond nonwoven fabric from which the deformations are formed (see Specification, page 6, lines 19-22; page 7, lines 7-9; and page 9, line 24-page 10, line 1) Since Mizutani teaches that both topsheet 5a and secondary topsheet 5b are formed from spun bond nonwoven fabrics, the outof-plane-deformations 13 defined in zone 9 defined by sheet 5b are inherently and necessarily soft and resilient. ([0023],[0024]) Thus the out-of-plane deformations of Mizutani are softresilient rib-like elements. The article 1 of Mizutani further comprises at least one channel in the form of compressed groove 11a or 11b present only on the top surface of core 7 to form a "deeper compressed groove". These channels 11a,11b define an interior portion of the sanitary napkin 1 inasmuch as they define the longitudinally extending side edges of the first region 8 (see Fig. 1) and the lateral extent of the interior portion (i.e. not extending beyond the endpoints of the channels). The term "deep-embossed channel" is not clearly defined in the specification because the only description of the channels in the disclosure is preceded by the words "by way of example" (see Specification, page 9, line 9). Therefore the term "deep-embossed channel" is given its broadest reasonable interpretation herein by examiner. The term "embossed" means that a substrate, in this case the combined structure of facing layer 5 and absorbent core 7, has a three-dimensional profile created by discrete areas of compression, i.e. compressed grooves 11a,11b that bond the two layers 5,7 together. Thus, either compressed groove 11a or 11b of Mizutani meets the limitation of a deep-embossed channel.

With respect to claim 14: The facing layer 5 comprises a topsheet in the form of thermoplastic

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sheet 5a and a secondary topsheet in the form of thermoplastic sheet 5b joined to each other. ([0024])

With respect to claim 15: The interior portion (i.e. the portion of facing layer 5 that does not extend in any direction beyond the deep-embossed channels or their endpoints) is inherently and necessarily completely bounded by said deep-embossed channel, since the deep-embossed channels as taught by Mizutani define the interior portion.

With respect to claim 16: As can be seen in Fig. 1 of Mizutani, the rib-like elements 13 are longitudinally-oriented. ([0023])

With respect to claim 17: The individual rib-like elements 13 of Mizutani have a length, measured along their longitudinal orientation, of between 1% and 100% of the length of the sanitary napkin as can be seen in Fig. 1. Therefore, since the claimed length is for individual rib-like elements, each element has a length of between 1-100% of the length of the napkin 1. The range of between 1%-100% overlaps the claimed range, therefore the rib-like elements 13 of Mizutani meet the claim limitation. Alternatively, one of ordinary skill in the art would be motivated to modify the article of Mizutani such that the rib-like elements 13 have a length between 1-50% of the length of the napkin. The motivation to modify the article of Mizutani in this manner to meet the limitation of claim 17 is provided by Mizutani's teaching that the shorter rib-like elements 13 that clearly have a length of between 1-50% of the napkin 1 (as can be seen in a relative context in Fig. 1) open out into the first region 8 to more quickly transfer the collected fluid to the absorbent core 7. Thus it would be obvious to one of ordinary skill in the art to modify the article of Mizutani such that the rib-like elements 13 have a length measure along

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their longitudinal orientation, of between 1-50% with a reasonable expectation of success to provide a means for the rib-like elements 13 to more quickly direct absorbed fluid to the absorbent core for better fluid handling.

With respect to claim 21: The phrase "consists essentially" is not defined in the disclosure. Therefore the claim is given its broadest reasonable interpretation, i.e. that the second region contains the claimed plurality of out-of-plane deformations and at least one other element in relatively small size or stature relative to the plurality deformations. Mizutani teaches a second region 9 having several out-of-plane-deformations 13 and two compressed grooves 11a,11b that occupy a very small percentage of area of the second region when compared to the total area occupied by the plurality of deformations. Thus, the second region 9 of Mizutani meets the limitation of claim 21.

With respect to claim 22: The phrase "consists essentially" is not defined in the disclosure. Therefore the claim is given its broadest reasonable interpretation, i.e. that the first region contains the claimed plurality of apertures and at least one other element in relatively small size or stature relative to the plurality of apertures. Mizutani teaches a first region 8 having a plurality of apertures 12 and two compressed grooves 11a,11b that occupy a very small percentage of area of the first region 8 when compared to the total area occupied by the plurality of apertures. Thus, the first region 8 of Mizutani meets the limitation of claim 22.

With respect to claim 23: The phrase "consists essentially" is not defined in the disclosure.

Therefore the claim is given its broadest reasonable interpretation, i.e. that the second region contains the claimed plurality of out-of-plane deformations and at least one other element in

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relatively small size or stature relative to the plurality deformations, and that the first region contains the claimed plurality of apertures and at least one other element in relatively small size or stature relative to the plurality of apertures. Mizutani teaches a second region 9 having several out-of-plane-deformations 13 and two compressed grooves 11a,11b that occupy a very small percentage of area of the second region when compared to the total area occupied by the plurality of deformations. Mizutani teaches a first region 8 having a plurality of apertures 12 and two compressed grooves 11a,11b that occupy a very small percentage of area of the first region 8 when compared to the total area occupied by the plurality of apertures 12. Thus, the first region 8 of Mizutani meets the limitation of claim 22.

With respect to claim 24: The facing layer 5 of Mizutani comprises a fibrous nonwoven web in the formf of thermoplastic elastomeric 5a and said plurality of apertures 12 are formed in said fibrous nonwoven web 5a. ([0024])

With respect to claim 25: The topsheet 5a and said secondary topsheet 5b are comprised of fibrous nonwoven webs inasmuch as said topsheet 5a and said secondary topsheet 5b are comprised of thermoplastic nonwoven fabric sheets formed from component fibers. ((0024))

With respect to claim 26: The topsheet 5a and said secondary topsheet 5b form a composite web material via sealing to one another. Mizutani teaches that facing layer 5 comprising topsheet 5a and secondary topsheet 5b are heat sealed to backsheet 6. Heat sealing of a thermoplastic material such as facing layer 5 involves melting of the facing layer 5 and backsheet 6 and contacting the layers to one another while melted so that when the layers cool, the fibers of the two adjacent layers are mechanically entangled together and remain in that

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configuration until heated again, thus necessarily intermeshing the topsheet 5a and secondary topsheet 5b.

With respect to claim 27: The first region 8 of facing layer 5 is disposed centrally to said sanitary napkin along said longitudinal axis defined by center line 2 inasmuch as the first region 8 is symmetrical with respect to said longitudinal and transverse axes. The second region 9 of facing layer 5 is disposed adjacent both the longitudinally-oriented side edges and adjacent the first region 8 (see Fig. 1). Therefore the second region meets the limitation "said second region is disposed adjacent at least one of said longitudinally-oriented side edges and adjacent said first region of said sanitary napkin."

With respect to claim 28: As can be seen in Fig. 1 of Mizutani, said plurality of outof-plane deformations 13 are disposed along at least one of said longitudinallyoriented side edges of said sanitary napkin 1.

## Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

 Claims 7 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani ('008).

With respect to claims 7,29: Mizutani does not teach that said deep-embossed channel 11a/11a/11b/11b has a depth of at least 50% of said thickness of said sanitary napkin 1. Ohashi teaches an absorbent article in the form of napkin 1 having grooves 15, wherein the channels

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15 have a depth corresponding to 10-90% of the thickness of the core 4. Since the topsheet 2 and backsheet 3 add thickness, the depth of the grooves will be at most between 10-90% of the thickness of the instant napkin 1. Ohashi teaches that channels 15 having depth within this range allows for the trapping of fluid collected to prevent leakage of fluid past the sides of the article. (498, ¶0015) Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Mizutani such that the grooves 11a,11a,11b,11b have a depth corresponding to at most between 10-90% of the thickness of the napkin as taught by Ohashi to render the grooves 11a,11b effective to trap and collect fluid to prevent leakage of fluid beyond the side edges of the instant article. The combined teaching of Mizutani and Ohashi thus teaches a napkin having a deep-embossed channel wherein the deep-embossed channel has a depth of at most between 10-90% of the thickness of the instant napkin, which overlaps the claimed range of at least 50% of the thickness of the napkin and thus renders claims 7 and 29 unpatentable.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/ Examiner, Art Unit 3761